IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

HUAWEI TECHNOLOGIES CO. LTD.,

Plaintiff,

v.

T-MOBILE US, INC. AND T-MOBILE USA, INC.,

Defendants,

NOKIA SOLUTIONS AND NETWORKS US LLC AND NOKIA SOLUTIONS AND NETWORKS OY,

TELEFONAKTIEBOLAGET LM ERICSSON AND ERICSSON INC.,

Intervenors.

Civil Action No. 2:16-cv-00055-JRG-RSP

Jury Trial Demanded

T-MOBILE AND INTERVENORS' REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT OF INELIGIBILITY OF U.S. PATENT NOS. 8,798,575 AND 8,531,971

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I. INTRODUCTION

The asserted claims of the '575 and '971 patents recite the abstract idea of determining how to charge a customer for use of a service, and do not supply any inventive concept to render that idea patent-eligible under 35 U.S.C. § 101. Huawei's argument that the claims are not directed to methods of charging customers is inconsistent with the plain language of the claims, the specification, and Huawei's own opposition. Huawei also fails to respond to T-Mobile's showing that the claims merely use functional language to describe the same types of conventional elements performing the same types of conventional functions as conventional flow based charging systems. Nor does Huawei articulate any inventive concept purportedly embodied in the claims.

II. THE ASSERTED '575 AND '971 PATENT CLAIMS ARE DIRECTED TO AN ABSTRACT IDEA

Huawei's contention that the asserted claims "are not directed to 'the abstract idea of determining how to charge (*i.e.*, bill) a customer for the usage of a service'" (Opp'n at 1), is belied by even a cursory examination of the '575 and '971 patents, as well as of Huawei's own opposition, which repeatedly confirm that the alleged inventions are directed entirely to methods for determining how to charge a customer for service usage. *See, e.g.*, *id.* at 3 ("Claim 1 recites 'a [CRF] ***determining a charging method*** and charging rules in response to a service request or other trigger event' and then having the 'CRF provid[e] a [TPF] with the ***charging rules*** and address information of a charging system'");[1] *id.* at 5 ("The improvement described and claimed in the '971 patent relates to empowering the CRF with the ability to dynamically provision ***new charging rules*** based on 'event triggers' . . . "); *id.* ("[T]he CRF is able to flexibly set event triggers according to the ***charging-relevant*** input information . . . "). Although the patents may contemplate related "policy" and "control" rules (*see id.* at 7), those rules are inextricably intertwined with how users

[1] Emphases added unless otherwise noted.

are charged for cellular data service—for example, policies regarding what happens if a user's data usage exceeds the amount paid for. Even the example given by Huawei of how the claims "are not merely how much a customer is billed" refers to "charging rules . . . such as [a] ***lower charging rate***." *Id.* at 4. Huawei's contention that the claims do not relate to determining how to charge a customer for usage of a service simply is not credible.

Therefore, the claims of the '575 and '971 patents, at their core, are directed to a simple variation on the fundamental economic practice of determining how to charge a customer for a service. Significantly, Huawei does not attempt to distinguish or otherwise engage with the many cases from the Supreme Court, Federal Circuit, and this Court holding that claims directed to fundamental economic practices are abstract ideas. *See* Mot. at 8-9. Nor does Huawei attempt to refute T-Mobile's showing that the claims of the '971 patent are directed to the doubly abstract idea of using event triggers—*i.e.*, performing a task upon the occurrence of an event—to determine how to charge a customer for usage of a service. Mot. at 10-11. As a result, Huawei has failed to rebut T-Mobile's showing that the asserted claims are abstract.

Huawei further argues in the alternative that, assuming the asserted claims are directed to determining how to charge a customer for usage of a service, the claims nonetheless are not abstract because they are "drawn specifically to the 'process or machinery' . . . used to accomplish the provisioning of charging rules." Opp'n at 8 (quoting *McRo, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016)). But as T-Mobile explained in it motion, the asserted claims use entirely functional language devoid of any technical explanation as to ***how*** this provisioning of charging occurs—other than that it involves a conventional CRF and TPF sending unspecified messages to each other regarding charging rules.[2] Mot. at 13. Thus, the claimed

[2] Given their functional language, the claims attempt to preempt a broad swath of the 3GPP standard implementation of flow based charging, an implementation that Huawei did not invent

method may be performed by conventional CRF and TPF modules running on generic computers capable of determining rules and transmitting messages regarding those rules. *See id*.

Lastly, Huawei argues that the claims are not abstract because "[t]here is no analog to a CRF or TPF outside the context of the specific 3GPP standard-compliant cellular communication networks" at issue here. Opp'n at 9-10. But Huawei's assertion is demonstrably incorrect. T-Mobile explained in its motion that the claimed functionality of the CRF and TPF reflect "the longstanding practice of a phone company determining, for example, whether to charge a customer for pre-paid minutes or based on minutes used ('charging method'), and how to charge a customer based on local or long-distance rates ('charging rules')," and "providing charging rules and information about the relevant charging system to its Billing Department." Mot. at 6.

III. HUAWEI FAILS TO ARTICULATE ANY INVENTIVE CONCEPT EMBODIED IN THE ASSERTED '575 AND '971 PATENT CLAIMS

T-Mobile explained in detail in its motion that the asserted claims recite the same types of conventional elements performing the same types of conventional functions as the known prior art flow based system, and thus fail to supply an inventive concept. T-Mobile also explained that the claims involve basic data-gathering and communication steps that the Supreme Court, Federal Circuit, and this Court have consistently determined add nothing to an abstract idea. Mot. at 1, 8-10, 12-15. Huawei never disputes this showing. In fact, the "Second Prong" section of Huawei's brief does not mention an "inventive concept" at all. Instead, Huawei relies on only one case, *Core Wireless*, for its entire argument under the second prong of the *Alice/Mayo* test.

Huawei touts the purported "technically specific subject matter of the claims" and asserts that the claims are "founded on subject matter specific to a 3GPP standard-compliant network."

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and that is far broader than anything the patents even claim to have contributed. In any event, "the absence of complete preemption does not demonstrate patent eligibility." *Ariosa Diagnostics Inc. v. Sequenom Inc.*, 788 F.3d 1371, 1376 (Fed. Cir. 2015).

Opp'n at 11-12. But "[t]he Supreme Court and [the Federal Circuit] have repeatedly made clear that merely limiting the field of use of the abstract idea to a particular existing technological environment does not render the claims any less abstract." *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1259 (Fed. Cir. 2016) (citations omitted); *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017) (holding that the fact that claims relating to dynamically managing extensible markup language (XML) documents were limited to "XML documents in particular" does "not make an abstract concept any less abstract"). Huawei's argument that the claims are limited to a specific 3GPP technical environment is insufficient to overcome this binding precedent.

Huawei also argues that the '575 and '971 patents are not directed to a generic computer or other non-specific machine elements, but rather "specific, concrete machine[s]." Opp'n at 11-12. The CRF and TPF are functional modules that were specifically described in the Release 6 3GPP standards—and thus were well-known before the asserted patents—but which run on *unspecified computers or equipment*. The claims do not purport to rely on CRFs or TPFs other than the type described by the *preexisting Release 6 3GPP standards*, nor do the asserted claims require that any steps be performed beyond the basic exchange of information using generic, unspecific data transmission methods. *See* Mot. at 9, 12-14. And contrary to Huawei's opposition (Opp'n, at 13), functional limitations like "determining charging rules" and "receiving a charging rule" make perfect sense outside the context of a 3GPP standard-compliant network. *See* Mot. at 6. These routine and basic limitations fall far short of transforming the nature of the claims into a patent-eligible application of the abstract idea.

IV. CONCLUSION

For the reasons herein and those in the opening motion, T-Mobile requests that the Court enter summary judgment that the asserted claims of the '575 and '971 patents are patent-ineligible.

Dated: August 15, 2017 By: */s/ Y. Ernest Hsin*

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on August 15, 2017, by electronic mail upon all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

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